IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

ST.Rev..No. 104 OF 2005()

TA.124/2002 OF S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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PETITIONERS/APPELLANT/ASSESSEE

PEEKAY STEEL CASTINGS PVT.LTD.,
NALLALAM, CALICUT, REPRESENTED BY
MANAGING DIRECTOR, P.K.AHAMMED.

BY ADV. SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS: /RESPONDENTS:
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1. ASSISTANT COMMISSIONER (ASSMT),
SPECIAL CIRCLE I, CALICUT.

2. DEPUTY COMMISSIONER (APPEALS),
CALICUT.

3. STATE OF KERALA, REPRESENTED BY
COMMISSIONER OF COM. TAXES,
THIRUVANANTHAPURAM.

GOVERNMENT PLEADER SRI. GEORGEKUTTY MATYHEW.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

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ST.REV. NO. 104/2005

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DATED THIS, THE 27TH DAY OF NOVEMBER, 2006.

O R D E R

Raman, J.

Revision petitioner is an assessee under the Kerala General Sales Tax Act. The assessments relates to the year 1997-98. Petitioner has two units. For te purpose of convenience, we shall refer those units as a taxable unit and a non taxable unit. The assessing officer verified the account books and on finding that there is price difference in respect of some goods sold by the units proposed to reject the account books and to make the assessment on best judgment basis under Section 17(3) of the Kerala General Sales Tax Act. The assessee objected to the proposal, but over ruling the same, the proposal was confirmed the correctness of which was canvassed in an appeal before the Deputy Commissioner of Appeals; however, without success. The assessee further appealed to the tribunal. The tribunal considered two points ie. (i) whether the rejection of the account was just and proper and (ii) whether the first appellate authority was justified in confirming the assessment. Both these points were considered together and found that the rejection of the account books was justified and the additions made on best judgment method is reasonable. Accordingly, the view of the first appellate authority was confirmed against which the present revision is preferred.

The assessee filed return showing a total turn over of Rs. 16,29,16,529/- and Rs. 3,41,51,768/- respectively. The assessing officer, after verifying the accounts of the assessee, noticed that the bars and rods produced in the own manufacturing unit of the assessee which was exempted from payment of tax, was sold at an average rate of Rs. 14,785/- per Mt. ie. 8708.895Mt. was sold at Rs. 12,87,64,761/-. But the turnover of Rs.2,360.520 MT of bars and rods produced in the other units which are taxable was sold for a sum of Rs. 3,31,90,555/- only and if those are estimated by applying the rate adopted by the assessee in respect of the bars and rods produced in the own manufacturing unit, it would come to Rs. 3,49,00,288/-. Accordingly, it was proposed to complete the assessment by making an addition of Rs. 3,49,00,288/- being the estimated sales turnover of the bars and rods produced in the other unit. It was contended by the

assessee that the price difference is due to the fact that price of the commodity is fluctuating every day and that the price difference is only negligible and it does not warrant rejection of the accounts at all. But the assessing officer found that there would not be any difference in the day-to-day fluctuation in price since it has taken the average rate for the whole year.